

Karansingh Vs. State

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Court : Madhya Pradesh

Decided On : Feb-06-1956

Reported in : 1956CriLJ1072

Judge : Khan, J.

Appellant : Karansingh

Respondent : State

Judgement :

ORDER

Khan, J.

1. The accused has been convicted by the Additional District Magistrate, Bhind, under Section 193, I.P.C. for intentionally giving false evidence and sentenced to rigorous imprisonment for one year and a fine of Rs. 100. His appeal against his conviction and sentence having been disallowed by the Sessions Judge, the accused has now filed this revision.

2. The charge against the accused is that, in Criminal Case No. 304 of 1952, before the Committing Court, Gohad, as a prosecution witness he made a certain statement on 25-3-1953, and, that later on in the same case during the trial before the Sessions Court (Case No. 13 of 1953), Bhind, on 27-7-1953, he made a different statement altogether. Charges under Sections 193 and 194, I.P.C., were

framed against the accused. While he was acquitted of an offence under Section 194, I.P.C. he was convicted under Section 193, I.P.C. only.

3. From the record it appears that the Sessions Judge, Bhind, made a complaint against the applicant under Section 476, Criminal P.C. and sent the applicant to the Additional District Magistrate for his being tried for an offence under Section 194, I.P.C. only. The Additional District Magistrate framed two charges against the petitioner.

One, under Section 194 I.P.C. for which the complaint had been made by the Sessions Judge and the other, under Section 193, I.P.C. for which no complaint was made. He acquitted the applicant under Section 194, I.P.C. but convicted him under Section 193. J. P.C.

In this revision the contention put forward by the learned Counsel for the petitioner is that the accused) having been acquitted under Section 194, I.P.C. an offence for which the complaint was made by the Sessions Judge, the Magistrate was incompetent to convict the accused under Section 193, I.P.C. for which there was no complaint by the Sessions Judge at all.

The learned Government Advocate has argued that it does not matter under what section the complaint is made, the trial Court can convict a person under a different section if the facts of the case establish his guilt.

4. The general rule is that any person can set the law in motion by a complaint to a Magistrate. One of the exceptions to this general rule is that in cases where an offence under Section 195, Sub-section (1), Clause (b) or Clause (c) appears to have been committed in the course of proceedings before any civil, revenue or criminal Court, that Court after an enquiry or otherwise will record a finding to that effect and shall forward a complaint to a Magistrate of. first class to try the case.

But it is not in every case that a civil, revenue or criminal Court would do this. The Court is further required to satisfy itself whether it is expedient in the interest of justice to launch a prosecution. Such is the direction contained in Section 476, Criminal P.C. under which the complaint was made in this case.

Section 195, Criminal P.C. further directs that no Court shall take cognisance of any offence enumerated in it except on the complaint in writing of some Court.

This being the law on the subject, the question which arises is whether in a case where a complaint of a Court is made under Section 476, Criminal P.C. for one offence, can the Magistrate to whom the case is sent for trial convict the accused for another?

5. After giving the matter the thought that it deserves, I am of the opinion that the complaint made by a Court to the Magistrate under Section 476, Criminal P.C. is not an ordinary complaint but is a special one.

It is not a report which is made straightway as soon as an offence is committed, which is the usual practice observed in criminal cases, but before doing so the Court is under an obligation to decide whether or not it will be in the interest of justice to do so.

If it decides that it will not be in the interest of justice, then although an offence is committed, no complaint shall be made. Now it follows from this that if the Court made a complaint for a particular offence, the Court considered the expediency of making a complaint under that section.

The Court obviously would not consider whether it will be in the interest of justice to indict a person for an offence, which it did not mention in the complaint. The irresistible conclusion, therefore, is that if the Court makes a complaint under one section, then the Magistrate cannot convict the accused under another section for the simple reason that the Court making the complaint did not think whether it would be expedient in the interest of justice to send the man for trial under another section not indicated by him.

6. After giving my own reasons I shall now briefly refer to two cases cited at the Bar.

7. Mr, Anand, the learned Counsel for the petitioner has referred me to 'Taskhir Ahmad v. Emperor' 1945 All 397 (AIR V 32) (A) in which I find support for the view I have taken.

8. The learned Government Advocate has cited 'Ram Bichha Misir y. Emperor' 1948 All 121 (AIR V 35) (B) in which Dayal J. has observed that when a complaint has been made to a Court under Section 195, Criminal P.C. the criminal Court is free to frame any charge on the basis of those facts.

9. But with great respect to the learned Judge, I would say that in making a complaint under Section 476, Criminal P. C the Court does not make a general survey of the offences mentioned in Section 195, Sub-section (1) Clauses (b) and (c), but the Court has to apply its mind as to whether a particular offence, which appears to have been committed, is one which it is expedient in the interest of justice to be enquired into or not.

The Magistrate, who tries an accused for a different offence is taking cognisance of an offence for which no complaint was made to him under Section 476, Criminal P.C. and the expediency of which was not at all considered by the Court that sent the case for trial. This would be against the clear direction contained in Section 195, Criminal P.C.

10. Dayal J. has referred to 'H. H. B. Gill v. Emperor' 1947 PC 9 (AIR V 34) (C) and he seems to rely upon it for the view he has taken. But the facts of that case do not support him. The facts of the Federal Court case are that the Governor General under Section 270 (1) had given his consent for the institution of criminal proceedings against the accused for offences punishable under Section 161, Section 120B and Section 420, Penal Code.

The accused was convicted by the trial Court but was acquitted on those charges by an order of the High Court and the case was remanded for retrial on fresh charges. On remand, the Magistrate framed a fresh charge under Sections 120B/161, I. P- C.

The point raised by the accused before the Federal Court was that there was no consent for the charge. But a glance at the sanction would show that it was for three offences covered by Sections 161, 120B, and 420, I.P.C.

It was left to the discretion of the Magistrate in what order one or more of these charges were to be framed against the accused. At the first trial, a charge was framed under Section 120B read with Section 420, I.P.C.

On the trial, subsequent to remand by the High Court, the charge was framed under Sections 120B/161, I.P.C. We must remember that the sanction was for three offences and the Magistrate in framing the subsequent charge under Sections 120B/161, I.P.C. did not travel beyond the three offences for which the sanction was already there.

It was for this reason that their Lordships of the Federal Court held that there was sufficient compliance with the requirements of Section 270 (1) and no further sanction of fresh consent was necessary.

In fact this case indirectly supports my views, namely, that conviction must eventually be for offences for which there was a sanction or for the matter of that for which a complaint is made under Section 476, Criminal P.C.

If in the case before their Lordships of the Federal Court, the Magistrate had convicted the accused for offences other than those for which the sanction existed, and, their Lordships had upheld that conviction, then and then alone the view would have been justified that a Magistrate can convict for offences beyond the sanction as well. But as it is, the conviction was for offences sanctioned only.

I therefore, feel fortified in my view that no conviction is proper if it is for an offence other than the one for which the sanction exists.

11. The accused was tried in the present case for an offence under Section 194, I.P.C. for which the complaint of the Court was. He was acquitted and the Government did not file any appeal against his acquittal. In the circumstances, the conviction of the accused under a different section cannot be held to be valid and he is entitled to an acquittal.

12. For reasons stated above, the revision is allowed and setting aside this conviction and sentence he is acquitted.

